



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1996

Ms. Judith A. Hunter
City Attorney's Office
City of Georgetown
P. O. Box 409
Georgetown, Texas 78627-0409

OR96-1946

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101430.

The City of Georgetown (the "city") received an open records request for "anything and everything" related to offense report number 96-10983. You have submitted to this office as responsive to the request an "Offense Report" and an "Arrest Report." You state that the city has released the "front page offense report information" from the Arrest Report to the requestor. *See generally* Open Records Decision No. 127 (1976). You seek to withhold all of the remaining records pursuant to section 552.108 of the Government Code, however, you also contend that "the entire reports should be withheld pursuant to section 552.101." We have considered the exceptions you claim and reviewed the submitted information.

We first address your assertion that section 552.108 of the Government Code excepts most of the submitted information from required public disclosure. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Since the submitted records at issue come within the purview of section 552.108, we conclude that most of the information may be withheld under this section.

We note, however, that information normally found on the front page of an offense report is generally considered public.¹ *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, the city must release the types of information that are considered to be front page offense report information from *both* the offense report and the arrest report, even if this information is not actually located on the front page of those reports. Therefore, except for front page offense report information, section 552.108 of the Government Code excepts the requested record from required public disclosure. Although section 552.108 authorizes the city to withhold the remaining information from disclosure, the city may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.

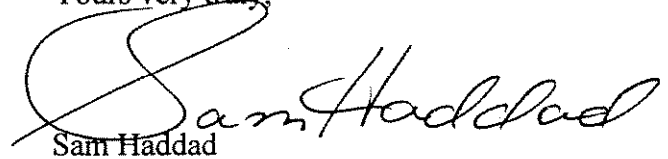
We next address your assertion that pursuant to the informer's privilege, in conjunction with section 552.101 of the Government Code, the entire reports should be withheld. Therefore, we consider whether section 552.101 of the Government Code excepts some of the submitted information, not covered by section 552.108, from required public disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Texas courts have long recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act.² Open Records Decision No. 549 (1990) at 4. For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. See Open Records Decision Nos. 515 (1988) at 2-5, 391 (1983). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision Nos. 549 (1990) at 5. However, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 (1978) at 2 (informer's privilege exception is not applicable when the identity of the informer is known to the subject of the communication). In reviewing the submitted records, it is evident that the requestor knows the complainant, whom you have classified as an "informer." See Open Records Decision No. 202 (1978). Consequently, the informer's privilege is inapplicable to the information you seek to withhold under the facts presented to us.

¹The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*. For your convenience, we have attached a list of the types of information the city must release from the submitted record.

²We note that in Open Records Decision No. 127 (1976), this office concluded that "identification and description of witnesses" and "statements by informants" is information which is protected by section 552.108 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Sam Haddad". The signature is written in dark ink and is positioned above the printed name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 101430

Enclosures: Submitted documents
Summary of Open Records Decision No. 127 (1976)

cc: Mr. Glen Allen Penner
2404-B Mesquite
Georgetown, Texas 78628
(w/ Summary of Open Records Decision No. 127 (1976))